

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSEPH P PERKINS SR
Claimant

APPEAL NO. 22A-UI-02071-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINN MAR COMMUNITY SCHOOL DISTRICT
Employer

**OC: 12/05/21
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 21, 2021, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 15, 2022. Claimant participated personally. Employer participated by Phil Miller. Both parties agreed to waive time and notice and move ahead with the hearing being held although parties were not sent the Notice of Appeal and Telephone Hearing ten days before said hearing was held.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 29, 2021. Employer discharged claimant on November 30, 2021 because claimant did not give to employer a doctor's note changing his restrictions to those more compatible with claimant's job as a custodian.

Claimant was injured throwing trash into a bin while working for employer on April 29, 2021. He was on FMLA from April 29-July 23, 2021 when his FMLA expired. Claimant was unable to return to work by July 30, when his doctor stated that claimant would be restricted to standing for short periods with occasional squatting and bending. Employer decided that they could not accommodate these restrictions and claimant was given a new 13 weeks off from work that extended until November 10, 2021.

Employer's worker's comp doctor believed claimant's injury to be a re-aggravation of an old injury

Claimant had another follow-up visit with his doctor on November 9, 2021. Employer stated that they were not provided with documentation changing claimant's work restrictions to allow claimant to do the necessary activities as a custodian.

Employer stated that they had no openings that would fit claimant's ongoing work restrictions.

Claimant was terminated from his position through a letter sent by employer on November 30, 2021 as he was seen by employer to be unable to do his job due to the ongoing restrictions.

Claimant stated that he can do seated work and has experience doing phone jobs and doing seated packaging.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning being unable to return to work without restrictions after a work-related injury.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant did no act of misconduct to warrant termination. He offered to do other jobs within his restrictions, but employer had no work for claimant to do. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated December 21, 2021, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

March 8, 2022
Decision Dated and Mailed

bab/mh